IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04/11/2003

Coram

The Honourable Mr. Justice P.K. MISRA
and
The Honourable Mr. Justice T.V. MASILAMANI

C.M.A. No.1311 of 1996 and C.M.A. No. 1527 of 1996

C.M.A.No.1311 of 1996

1. Kasinathan
2. Lakshmi
3. Rajathi
4. Sivabakyam
5. Murugan (Minor)
rep. by father Kasinathan .. Appellants

-Vs-

1. P.A.Thangavel
2. The Branch Manager,
United India Insurance Company Ltd,
Tiruchenkodu.
3. The Managing Director,
Thiruvalluvar Transport Corporation Ltd,
Anna Salai, Madras-2. .. Respondents

C.M.A.No.1527 of 1996

Ananthan .. Appellant

vs.

1. Mrs.Sikappi

2. P.A.Thangavel

3. The Branch Manager,
United India Insurance Co Ltd,
North Car Street, Thiruchenkodu.

4. The Managing Director, T.T.C.,
Anna Salai, Madras-2. .. Respondents

Civil Miscellaneous Appeals against the judgment and decrees dated 2
8.4.1995 made in M.C.O.P.Nos.563 of 1991 and 2 of 1992 on the file of the
Motor Accidents Claims Tribunal (Subordinate Judge), Ariyalur.

!For Appellants in both CMAs. :: Mr.R.Gouri,
For Mr.T.S.Sivagnanam

^For 2nd Respondent ::Mr.P.Adiseshan
in CMA 1311/1996
and R3 in CMA 1527/1996

For R3 in CMA 1311/1996 ::Mr.M.Suresh

For R4 in CMA 1527/1996 ::Mr.G.Munirathnam

:COMMON JUDGMENT

(The judgment of the Court was delivered
by T.V. MASILAMANI, J.)

The appellants are the claimants before the Motor Accidents Claims
Tribunal (Subordinate Judge), Ariyalur.

2. On 13.10.1991 at 9.00 P.M. the deceased in M.C.O.P.No.563 of 1991
, namely, Arumugam and the petitioner in M.C.O.P.No.2 of 1992, namely,
Ananthan, were travelling in the bus belonging to the 3rd
respondent-Corporation from Trichy to Madras. While so, the lorry belonging
to the first respondent came behind the bus and dashed against the same as a
result of which the said Arumugam died in the accident and the said Ananthan
sustained injuries. Hence the claim applications were filed and awards passed
by the learned Claims Tribunal after analysing the evidence and arguments of
both sides.

3. The learned counsel for the claimants in M.C.O.P. No.563 of 1991
has urged that the compensation awarded by the Claims Tribunal is very meagre,
that the deceased was only 20 years at the time of the accident, that had he
been alive, he would have supported the family of the claimants by his
contribution, that the earning of the deceased fixed at Rs.50/- per day is
against evidence both oral and documentary adduced by the claimants and that
therefore, the just and reasonable compensation amounts have to be awarded.

4. We heard the learned counsel for the respondents on the above
contentions and perused the recorded evidence in this case.

5. It is seen from that evidence adduced on the side of the claimants
that the deceased Arumugam was vending tea and coffee to several factories and
according to P.W.5, who is working in one such factory, the deceased was
supplying tea and coffee for about 25 to 30 people in his factory and thereby
earning Rs.40/- per day and he used to supply tea and coffee to about 10 to 15
factories. Though Ex.A-9, certificate issued by the Manager of the factory in
which P.W.5 was employed was produced in Court to support his evidence, the

author of the same has not given evidence and thereby it was rightly rejected by the learned Tribunal Judge. However, the evidence of P.W.5 despite rigourous cross-examination, appears to be cogent and convincing and therefore we are of the considered view that the deceased would have earned an average of income Rs.60/- per day, i.e., Rs.1,800/- per month and deducting Rs.600/- towards his personal expenses and in lieu of lump sum payment of compensation amount, his contribution to the family would be Rs.1,200/- per month, i.e., Rs.14,400/- per annum.

6. The learned counsel for the appellants has urged that the multiplier fixed by the Tribunal is very low for the fact that the dependency in this case is more and that therefore a multiplier of 16 has to be applied in accordance with Schedule II to Section 163-A of the Motor Vehicles Act, 1988. It is no doubt true that the age of the deceased at the time of accident was 20 and it is seen from the ScheduleII to Section 163-A that a multiplier of 16 is prescribed in such cases. The learned counsel for the appellants has placed reliance on 2001 S.C.C. (CRI) 1569 (TARA KAKATI v. ORIENTAL INSURANCE CO LTD) and 19 98 (8) S.C.C. 633 (DONAT LOUIS MACHADO v. L.RAVINDRA) in support of such proposition. In answer to such contention, the learned counsel for the respondents has relied on the decision of the Apex Court, 200 2 A.C.J. 1559 (H.S. AHAMMED HUSSAIN v. IRFAN AHAMMED) and argued rightly in our opinion that while deciding the multiplier the age of the claimants also has to be taken into account (vide) Second Schedule to Section 163-A of the Motor Vehicles Act. It was held therein as follows:-
"It is well settled that life expectancy of the deceased or the beneficiaries whichever is shorter is an important factor. Reference in this connection may be made to the decision of this court in the case of C.K.SUBRAMONIA IYER v. T.KUNHI KUTTAN NAIR, 1970 A.C.J. 110 (S.C.). In the case of NATIONAL INSURANCE CO LTD v. SWARANLATA DAS, 1993 A.C.J. 748 (S.C.), it was observed

that "the appropriate method of assessment of compensation is the method of capitalisation of net income choosing a multiplier appropriate to the age of the deceased or the age of the dependants whichever multiplier is lower.""

It is seen from the records of the case that the parents of the deceased were aged 50 and 45 years and therefore we are of the considered view that the multiplier of 13 may be adopted in this case.

7. On a calculation, it will be seen that the compensation awardable in this case for the death of the said Arumugam will be (Rs.1200 x 1 2 x 13) Rs.1,87,200/-. The loss of the son at the age of prime youth cannot be adequately compensated in monetary terms. However, both the parents on account of loss of love and affection may be awarded each Rs.5,000/- totally Rs.10,000/-. Similarly, it is not in dispute that the mental agony and the pain and suffering while he was admitted to hospital immediately after the accident will also be taken into account and on this score, a sum of Rs.10,000/- may be awarded as compensation. Further on account of funeral expenses a sum of Rs.2,800/- may be fixed as reasonable compensation and in all, a total sum of Rs.2,10,000/- is fixed as just and reasonable compensation with reference to the claim in M.C.O.P.No.563 of 1991.

8. Regarding the claim of the injured in M.C.O.P.No.2 of 1992, the learned counsel for the petitioner has contended that as against the claim of Rs.50,000/-, the Tribunal awarded only a sum of Rs.1,500/- and that since the said amount is grossly inadequate, the same may be enhanced.

9. The learned counsel for the claimant has drawn our attention to the evidence of the injured himself as P.W.1 to the effect that he suffered injuries on his head, back and leg due to the accident and that he was treated in the Perambalur Government Hospital. As per Ex. P-9 wound certificate, it is evident that he suffered simple injuries. It is seen from the said document that the claimant sustained an incised wound on the left parietal area of his head and that the nature of the said injury is simple. Having regard to the facts and circumstances of the evidence, we are of the opinion that a sum of Rs.10,00 0/- towards pain and suffering and mental agony suffered by the claimant as compensation will meet the ends of justice. Therefore, we find that the claimant in M.C.O.P.No.2 of 1992 is entitled to a compensation of Rs.10,000/-.

10. Thus, the appeals are allowed as mentioned above and the compensation amount fixed by the Tribunal in MCOP No.563 of 1991 is enhanced to Rs.2,10,000/- with interest on the enhanced amount at Rs.9% per annum from the date of the petition. Similarly, the compensation amount fixed by the Tribunal in M.C.O.P.No.2 of 1992 is enhanced to Rs.10 ,000/- with interest at 9% from the date of the petition and the respondents 2 and 3 are directed to deposit the enhanced compensation amounts within 8 weeks in accordance with the proportion fixed by the Tribunal failing which the said amount shall carry interest at the rate of 12% thereafter. However, there will be no order as to costs.

Index: Yes
Website: Yes

dpp

To
1. The Motor Accidents Claims Tribunal (Subordinate Judge),
Ariyalur. (with records)

2. The Record Keeper, V.R.Section, High Court, Madras.

□